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OFFICE OF PETITIONS

In re Application of :
Wen C. Huang :
Application No.: 10/619287 : DECISION ON
Filing or 371(c) Date: 07/15/2003 : PETITION
Title of Invention: DIRECT WRITE :
PROCESS AND APPARATUS :

This is a decision in response to the Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, filed March 7, 2007. Applicant also filed a petition to revive the application under 37 CFR 1.137(b), on April 12, 2007. A Decision on the petition to revive the application will be held in abeyance pending resolution of the petition to withdraw the holding of abandonment.

This Petition is hereby **dismissed**.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Allowance and Issue Fee Due, mailed November 1, 2006. The Notice set a non-extendable three (3) month period for reply. No reply having been received, the application became abandoned on February 2, 2007. A Notice of Abandonment was mailed February 27, 2007.

Petition under 37 CFR 1.181

Applicant files the instant petition and asserts that he did not receive the Notice of Allowance and Notice of Allowability.

Applicable Law, Rules and MPEP

The MPEP 711.03(c)A, Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action, provides

In Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971), the court decided that the Office should mail a new Notice of Allowance in view of the evidence presented in support of the contention that the applicant's representative did not receive the original Notice of Allowance. Under the reasoning of Delgar, an allegation that an Office action was never received may be considered in a petition to withdraw the holding of abandonment. If adequately supported, the Office may grant the petition to withdraw the holding of abandonment and remail the Office action. That is, the reasoning of Delgar is applicable regardless of whether an application is held abandoned for failure to timely pay the issue fee (35 U.S.C. 151) or for failure to prosecute (35 U.S.C. 133). To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions). (Emphasis supplied)

MPEP 711.03(c)

Analysis

Applicant has failed to demonstrate that the office action was not received. Applicant must, in addition to stating that the Notices were not received, also state that a search of his file jacket and docket records reveals that the Notices were not received, and provide a copy of the file jacket and docket records to this Office. The petition is dismissed without prejudice. Applicant should file a Request for Reconsideration of Petition and include the necessary statements and copies of docket records and file jacket.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.

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